

**OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE
EXECUTIVE OFFICE OF THE PRESIDENT
WASHINGTON, D.C.
20508**

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**FOR IMMEDIATE RELEASE:
DECEMBER 10, 2001**

**01-108
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WTO Panel Says More Facts Needed to Decide Canada Dairy Case

WASHINGTON - A World Trade Organization (WTO) Appellate Body concluded last week that it did not have enough facts to make a ruling in a case brought by the United States and New Zealand against Canada's dairy export measures. The United States has announced it intends to continue to pursue a favorable ruling by requesting a further panel hearing to present additional factual information.

The dispute over Canada's dairy export program goes back to 1999. Although Canada had ostensibly revamped its dairy export program due to earlier adverse WTO rulings, in July 2001 the WTO found that Canada's program was an export subsidy that violated WTO rules. Canada appealed and last week the WTO determined that it was unable to make a ruling because of an incomplete factual record. The Appellate Body stated that its ruling "does not amount to a finding that the measure at issue is WTO-consistent" and that "it remains possible that the measure is such an export subsidy."

The upshot of the WTO's ruling is that another hearing is required to further develop the factual record. The United States intends to present additional evidence to the WTO that will show that Canada is violating its WTO commitments by unfairly subsidizing its dairy exports. The United States will continue to fight to make sure America's dairy producers are treated fairly.

The U.S. calculates that Canadian export subsidies result in lost sales by American farmers and dairy processors of up to \$35 million per year.

Background

In 1997, the National Milk Producers Federation, the U.S. Dairy Export Council and the International Dairy Foods Association petitioned the Office of the U.S. Trade Representative to challenge Canada's dairy trade practices as inconsistent with its WTO obligations on export subsidies and market access.

After bilateral consultations, the United States referred its complaint to a WTO dispute settlement panel in February 1998. New Zealand joined the WTO challenge to Canada's export subsidies. In 1999, a WTO dispute settlement panel found that Canada's special milk class system and import restrictions on dairy products violated WTO obligations. The WTO Appellate Body affirmed the panel's finding on export subsidies.

In response to the panel and Appellate Body reports, Canada replaced its special milk class system with a new dairy export program in each province. However, the United States alleged that Canada's new measures left unchanged the fundamental aspects of the programs found by the WTO to constitute export subsidies. As a result, the United States and New Zealand requested that the WTO review the new provincial programs. The United States argued, and the panel agreed, that the continued involvement of Canadian federal and provincial governments in the provision of low-cost milk to processors for export constituted an export subsidy and that Canada had already exceeded its commitment under the WTO Agriculture Agreement on subsidized cheese exports. The Appellate Body disagreed with the panel on certain legal points but concluded that it was unable to make a finding on the legality of the dairy export program due to an incomplete factual record. The United States intends to request a further panel hearing in order to present additional factual information.

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